SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **05M**

Justice

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DAWN MITCHINER,

Plaintiff,

- v -

CITY OF NEW YORK, JOHN SANTUCCI, ANTHONY MANISCALCO

Defendant.

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INDEX NO. 162210/2024

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion for DEFAULT JUDGMENT.

Plaintiff Dawn Mitchiner ("plaintiff") moves, pursuant to CPLR § 3215, for the entry of a default judgment against defendants City of New York, John Santucci, and Anthony Maniscalco (collectively, "defendants") based on their alleged failure to timely appear or otherwise respond to the complaint, and for such other and further relief as the court deems just and proper.

Defendants oppose plaintiff's motion and cross-move for an order: (1) dismissing the complaint in its entirety pursuant to CPLR § 3211(a)(7) for failure to state a cause of action under the New York City Human Rights Law ("NYCHRL"), Administrative Code § 8-107 et seq., and related provisions; and, in the alternative, (2) striking various forms of relief and claims, including punitive damages against the City and a separate cause of action under Administrative Code § 8-502; and (3) deeming their time to respond to the complaint extended and their opposition and cross-motion timely, or otherwise granting them a further extension of time to answer.

For the reasons that follow, plaintiff's motion for a default judgment is denied; defendants' request for an extension of time to respond is granted; and defendants' cross-motion to dismiss the complaint is denied.

BACKGROUND AND PROCEDURAL HISTORY

This is a civil rights employment action brought by plaintiff, a former NYPD officer, asserting claims of disability discrimination, hostile work environment, failure to provide reasonable accommodation and engage in cooperative dialogue, and retaliation under the NYCHRL, together with related claims against the individually named District Surgeon defendants.

Plaintiff commenced this action by filing a summons and complaint on or about December 24, 2024. She alleges that she sustained a concussion in July 2021 when struck in the head by a falling bolt at or near her post, and that she thereafter experienced ongoing cognitive and neurological sequelae that limited her ability to perform certain tasks without accommodation.

She further alleges that she was placed on restricted duty, that she was intermittently assigned to posts she characterizes as reasonable accommodations permitting her to perform the essential functions of her job, and that the Physician Defendants repeatedly accused her of malingering, denied or obstructed treatment and accommodations recommended by her treating physicians, threatened her with "survey" and termination due to her disability, and ultimately left her with no realistic choice but to retire.

The record reflects that defendants did not ignore this action. On January 10, 2025—approximately 17 days after commencement—counsel for the City filed a notice of appearance and, on the same date, the parties entered into a stipulation extending defendants' time to respond to the complaint to April 21, 2025.

Plaintiff thereafter consented to a second extension to May 21, 2025, and a third extension to June 18, 2025. On June 16, 2025, defendants' counsel requested an additional extension of time; on June 25, 2025, he transmitted to plaintiff's counsel a proposed stipulation that would extend the time to respond conditioned on any further adjournment requiring a showing of good cause. Plaintiff's counsel did not respond to that proposal and did not communicate further regarding defendants' timing until after filing the present default motion.

Plaintiff's motion for a default judgment was filed in October 2025, nearly ten months after commencement, asserting that defendants still had not answered or otherwise responded despite multiple extensions and that, accordingly, they had "failed to appear or plead in this action in a timely manner." Plaintiff contends that she has satisfied each technical requirement of CPLR 3215—proof of service, proof of the claim, and proof of default—and that all factual allegations in the complaint must therefore be deemed admitted as to liability.

Defendants opposed and, on November 17, 2025, cross-moved to dismiss the complaint and sought, in the alternative, that the court excuse any delay and deem their submissions timely or grant them a further extension to answer. Defendants' counsel explains that between May 21, 2025, and October 22, 2025, he was heavily occupied with discovery and motion practice in other matters, including an injunction application and two federal summary judgment motions, and that the Jewish High Holidays—observed in accordance with Orthodox practice on weekdays that year—further reduced his available work time during the critical interval.

Defendants' memorandum of law also advances a detailed CPLR § 3211(a)(7) challenge to each of plaintiff's causes of action, arguing that the complaint fails, as a matter of law, to plead a disability, discriminatory animus, a hostile work environment, failure to accommodate or engage in cooperative dialogue, retaliation, supervisory liability, an independent § 8-502 claim, or punitive damages against the City. Plaintiff opposes defendants' request for yet another extension, asserts a pattern of deliberate delay, and maintains that she is prejudiced by continued postponement of a merits determination.

ARGUMENTS

Plaintiff argues that she has met all prerequisites for a CPLR § 3215 default judgment: (1) affidavits of service establish proper service of the summons and complaint upon each defendant; (2) the complaint and counsel's affirmation supply proof of the facts constituting the claim, describing in detail plaintiff's alleged disability, the course of treatment, the conduct of the Physician Defendants, and the alleged failure to accommodate, retaliatory acts, and hostile work environment; and (3) defendants have not timely appeared or pleaded despite multiple stipulated extensions and nearly ten months having elapsed since commencement.

Plaintiff emphasizes that she consented to three extensions, ultimately extending defendants' time to respond to June 18, 2025, and that defendants neither served an answer nor moved by that date, nor sought timely relief from the court. She characterizes defendants' subsequent request, made only after she moved for default, as part of a broader pattern of delay.

In opposing defendants' request for a further extension, plaintiff argues that defendants have failed to demonstrate "good cause" under CPLR § 2004, because generalized assertions concerning workload, staffing, or internal scheduling are not a sufficient excuse for missing court-ordered deadlines, particularly where, as here, defendants had long possessed the relevant records and plaintiff's claims are based largely on defendants' own documents and admissions. She further contends that continued delay is prejudicial, as she remains in limbo concerning her reinstatement, promotion, and reputational interests, and that defendants' pattern of belated extension applications undermines judicial efficiency.

Defendants respond that New York law embodies a "strong public policy in favor of resolving actions on their merits," citing decisions such as *Velasquez v New York City Tr. Auth*., 198 AD3d 555 (1st Dept 2021), *Matter of Rivera v New York City Dept. of Sanitation*, 142 AD3d 463 (1st Dept 2016), and *Kaiser v Delaney*, 255 AD2d 362 (2d Dept 1998), and that this policy counsels against the drastic remedy of a default judgment where no real prejudice is shown.

Defendants first argue that plaintiff's motion fails at the threshold because they have not defaulted. They note that CPLR § 320(a) defines an appearance as service of an answer, service of a notice of appearance, or the making of a motion that has the effect of extending the time to answer, and they point out that courts recognize even "informal" appearances that demonstrate an intention to participate in the action. Relying on *Howard B. Spivak Architect, P.C. v Zilberman*, 59 AD3d 343 (1st Dept 2009), *Nationstar Mtge., LLC v Stroman*, 202 AD3d 804 (2d Dept 2022), and *Parrotta v Wolgin*, 245 AD2d 872 (3d Dept 1997), defendants contend that their notice of appearance, multiple stipulations extending time, continuous email communications, and present opposition and cross-motion constitute clear appearances precluding entry of a default.

Alternatively, defendants contend that even if they were deemed in default, the Court should exercise its discretion under CPLR §§ 2004 and 5015(a) to excuse any default because they have established both a reasonable excuse and meritorious defenses, as required by cases such as *SOS Capital v Recycling Paper Partners of PA, LLC*, 220 AD3d 25 (1st Dept 2023), *Chevalier v 368 E. 148th St. Assoc., LLC*, 80 AD3d 411 (1st Dept 2011), and *Wassertheil v Elburg, LLC*, 94 AD3d 753 (2d Dept 2012). They emphasize that counsel's competing litigation obligations and

religious observances account for the delay, that plaintiff has not demonstrated concrete prejudice from the several-month interval, and that the public policy favoring decisions on the merits strongly favors excusing any technical default.

On the merits of their CPLR § 3211(a)(7) cross-motion, defendants contend that plaintiff has not adequately pled a "disability" within the meaning of NYCHRL § 8-102, because her references to a concussion and "lingering neurological effects" are, in their view, conclusory and fail to describe a cognizable impairment or its functional limitations, and because she does not allege that she could perform the essential functions of a police officer with a reasonable accommodation. They maintain that her allegations that the Physician Defendants harassed her, yelled at her, and labeled her a malingerer amount, at most, to mere "petty slights and trivial inconveniences" that are not actionable under *Williams v New York City Hous. Auth.*, 61 AD3d 62 (1st Dept 2009), and that any such claim is foreclosed by *Aykac v City of New York*, 221 AD3d 494 (1st Dept 2023). They further assert that advising plaintiff that a "survey" would be recommended does not equate to a threat of termination, because a survey is simply the first step in a multi-stage pension and disability evaluation process in which the Medical Board and Board of Trustees independently assess an officer's condition, as described in *Lopez v Shea*, 2020 NY Slip Op 34023(U) (Sup Ct, NY County 2020), *Matter of Khurana v Kelly*, 73 AD3d 497 (1st Dept 2010), and *Cartagena v City of New York*, 345 F Supp 2d 414 (SDNY 2004).

In addition, defendants argue that plaintiff's claims for failure to accommodate and failure to engage in a cooperative dialogue are deficient because she has not sufficiently pled an actual disability and has not adequately alleged that she requested a specific accommodation or that she could perform the essential requisites of the job with such accommodation, as required by NYC Admin. Code §§ 8-107(15), (28), *Goolsby v City of New York*, 83 Misc 3d 445 (Sup Ct, NY County 2024), *aff'd* 236 AD3d 404 (1st Dept 2025), and *Baker v The Home Depot*, 445 F3d 541 (2d Cir 2006). They further contend that she has not alleged protected activity or a causally related adverse action sufficient to sustain a retaliation claim under NYC Admin. Code § 8-107(7) and *Matter of Local 621 v New York City Dept. of Transp.*, 178 AD3d 78 (1st Dept 2019).

Defendants also insist that there is no basis for supervisory liability under NYC Admin. Code § 8-107(13)(b), that her separate cause of action under § 8-502 merely duplicates her substantive § 8-107 claims, and that punitive damages are unavailable against the City for NYCHRL violations under *Krohn v New York City Police Department*, 2 NY3d 329 (2004), and *Maldonado v City of New York*, 2024 NY Slip Op 33163(U) (Sup Ct, NY County 2024). Plaintiff responds that, at the pleading stage, the NYCHRL must be construed broadly in her favor; that she has alleged an ongoing neurological impairment with concrete functional consequences, along with repeated requests for accommodations and treatment supported by treating-physician notes; that she has described a sustained pattern of hostile and retaliatory conduct culminating in a forced retirement; and that defendants' objections are directed to the weight and persuasiveness of the evidence rather than to the legal sufficiency of her well-pled claims.

DISCUSSION

I. Plaintiff's Motion for a Default Judgment

CPLR § 3215 authorizes entry of a default judgment where "a defendant has failed to appear, plead or proceed to trial." A plaintiff seeking such relief must show proof of service, proof of the facts constituting the claim, and proof of the default. But the entry of a default judgment remains discretionary, and New York courts repeatedly caution that "a strong public policy favors resolving actions on their merits" (*Velasquez v New York City Tr. Auth./MTA*, 198 AD3d 555, 556 [1st Dept 2021]; *Matter of Rivera v New York City Dept. of Sanitation*, 142 AD3d 463 (1st Dept 2016); *Kaiser v Delaney*, 255 AD2d 362, 362 [2d Dept 1998]).

Here, the court does not question that plaintiff has supplied affidavits of service and a detailed complaint sufficient to constitute "proof of the claim" for purposes of CPLR § 3215. The dispute centers on whether defendants have "failed to appear" within the meaning of CPLR § 3215 and, if so, whether the drastic sanction of a default is appropriate.

A. *Defendants Have Appeared and Are Not in Default*

CPLR § 320(a) provides that "[t]he defendant appears by serving an answer or a notice of appearance, or by making a motion which has the effect of extending the time to answer." Courts have also recognized that informal communications and participation in the litigation may constitute an appearance where they clearly indicate a defendant's intent to defend without jurisdictional objection (*Howard B. Spivak Architect, P.C. v Zilberman*, 59 AD3d 343, 344 [1st Dept 2009]; *Nationstar Mtge., LLC v Stroman*, 202 AD3d 804, 806 [2d Dept 2022]; *Parrotta v Wolgin*, 245 AD2d 872 [3d Dept 1997]).

The record demonstrates that defendants clearly appeared in this action well before plaintiff moved for default. Within 17 days of commencement, counsel for the City filed a notice of appearance. On that same date, the parties executed a stipulation, so-ordered by the court, extending defendants' time to respond to April 21, 2025; subsequent stipulations extended the time to May 21, 2025, and then to June 18, 2025. Counsel remained in communication with plaintiff's counsel regarding further extensions and, after plaintiff elected not to respond to the June 25 proposal, defendants opposed the motion for default and cross-moved to dismiss.

On these facts, and consistent with the authorities cited in defendants' memorandum, the court concludes that defendants have "appeared" within the meaning of CPLR § 320(a) and thus are not in default in the strict jurisdictional sense that would warrant a default judgment. To be sure, a default judgment is generally inappropriate where, as here, a defendant has filed an appearance, entered stipulations with the plaintiff, and thereafter actively opposed the plaintiff's motion.

B. *Even if a Technical Default Existed, It Would Be Excused*

Even assuming, *arguendo*, that defendants' failure to serve a responsive pleading by June 18, 2025, constituted a technical default, the court would exercise its discretion under CPLR §§ 2004 and 5015(a) to excuse it. To obtain relief from a default, a party must demonstrate both a reasonable excuse and a potentially meritorious defense (*SOS Capital v Recycling Paper Partners of PA, LLC*, 220 AD3d 25, 38 [1st Dept 2023]; *Chevalier v 368 E. 148th St. Assoc., LLC*, 80 AD3d 411, 413 [1st Dept 2011]; *Wassertheil v Elburg, LLC*, 94 AD3d 753, 754 [2d Dept 2012]).

Whether an excuse is "reasonable" is a *sui generis* determination, guided by several factors, including the length of the delay, whether the default was willful, the existence of prejudice to the opposing party, and the strong policy favoring resolution on the merits (*SOS Capital*, 220 AD3d at 38; *Chevalier*, 80 AD3d at 413–14; *Gecaj v Gjonaj Realty & Mgt. Corp*., 149 AD3d 600, 602 [1st Dept 2017]; *Rodgers v 66 E. Tremont Hgts. Hous. Dev. Fund Corp*., 69 AD3d 510 [1st Dept 2010]).

Here, the period between the expiration of the last stipulation (June 18, 2025) and the filing of plaintiff's default motion in October 2025, while not trivial, is measured in months rather than years. Defendants' counsel has provided a detailed explanation, supported by his affirmation, describing contemporaneous obligations in other significant litigation and the impact of religious observances that, in that year, fell entirely on weekdays—reducing the available working days during an already congested period. There is no indication that defendants intended to abandon their defense; to the contrary, they consistently sought extensions, proposed a good-cause condition for future adjournments, and then promptly opposed the default motion once filed.

Nor has plaintiff demonstrated concrete prejudice beyond the inherent frustration of delay. She does not identify lost witnesses, spoiled evidence, or a material change in position attributable to the several-month interval, and courts have routinely excused comparable or longer delays in the absence of such prejudice (*see, e.g.*, *Matter of Rivera*, 142 AD3d at 463–64; *Kaiser*, 255 AD2d at 362).

Finally, as discussed below, defendants' memorandum sets forth facially meritorious defenses to each cause of action, even though the court ultimately concludes that those defenses are better left to be tested on a fuller factual record. *Chevalier* and *SOS Capital* teach that where a defendant demonstrates a potentially meritorious defense and the other factors weigh against a finding of willful conduct or prejudice, courts should lean toward excusing defaults in favor of merits adjudication.

In sum, whether viewed through the lens of appearance under CPLR § 320(a) or through the discretionary framework for vacating defaults, the record here does not warrant the entry of a default judgment. Plaintiff's motion is therefore denied, and defendants are granted an extension of time, *nunc pro tunc*, as set forth in the decretal paragraphs below.

II. Defendants' CPLR § 3211(a)(7) Cross-Motion to Dismiss

On a motion to dismiss under CPLR § 3211(a)(7), the court must afford the complaint a liberal construction, accept the facts alleged as true, and accord plaintiff the benefit of every favorable inference. This is particularly so under the NYCHRL, which must be construed "broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible" (*Williams*, 61 AD3d at 66–68). The question is not whether plaintiff will ultimately prevail, but whether she has pled facts that, if proven, would entitle her to relief.

At this early stage, and applying the NYCHRL's remedial mandate, the court concludes that plaintiff has adequately stated claims for disability discrimination, hostile work environment,

failure to accommodate and to engage in a cooperative dialogue, and retaliation. The cross-motion to dismiss is therefore denied in its entirety.

A. *Disability and Discrimination Under the NYCHRL*

Defendants argue that plaintiff has not pled a "disability" within the meaning of NYC Admin. Code § 8-102 because she does not articulate a precise medical diagnosis or specify the objective criteria underlying her alleged limitations. The court disagrees.

Under § 8-102, a disability is "any physical, medical, mental or psychological impairment, or a history or record of such impairment," including impairments of the "neurological system." The statutory definition is intentionally broad and does not require a talismanic recitation of diagnostic labels at the pleading stage. Plaintiff alleges that she suffered a concussion from a line-of-duty incident, that she experienced ongoing "cognitive issues" and "lingering neurological effects" for more than two years thereafter, that her treating physicians repeatedly concluded she required continued limitations and therapies, and that she was assigned to and effectively performed restricted-duty posts which she characterizes as reasonable accommodations allowing her to satisfy the essential requisites of her position.

Taken together, those allegations plausibly describe an impairment of the neurological system with functional consequences for plaintiff's work and are sufficient, at this juncture, to raise at least an inference of "disability" under the NYCHRL. The authorities defendants rely upon—such as *Toth* and *Clift*—involved bare, unelaborated assertions of disability devoid of factual detail or any description of functional limitation.

Here, by contrast, plaintiff ties her alleged cognitive and neurological issues to specific work limitations, denied accommodations, and adverse responses by NYPD medical personnel. Whether the medical evidence ultimately substantiates those allegations is a question for summary judgment or trial, not a basis for dismissal at the pleading stage.

Defendants further contend that plaintiff does not allege she could perform the "essential functions" of a police officer with a reasonable accommodation, but only the functions of discrete light-duty assignments.

That argument again goes to the factual merits of the accommodation analysis. Plaintiff alleges that she performed essential duties, without undue hardship to the City, while on restricted assignments and that the removal of those assignments and insistence on full-duty patrol contravened both her medical limitations and defendants' obligations to consider reasonable accommodations. At the pleading stage, those allegations suffice to frame a dispute regarding whether her proposed accommodations would have enabled her to satisfy the essential requisites of the job within the meaning of § 8-107(15).

B. *Hostile Work Environment and the Aykac Decision*

Defendants next argue that plaintiff's allegations that the Physician Defendants "harassed" her, yelled at her, called her a malingerer, and threatened "survey" do not rise above "petty slights

and trivial inconveniences" and are foreclosed by *Aykac v City of New York*, 221 AD3d 494 (1st Dept 2023), which affirmed dismissal of a similar NYPD District Surgeon-based claim.

The court does not read *Aykac* as mandating dismissal here. In *Aykac*, the plaintiff's hostile-environment theory centered on a handful of remarks by a District Surgeon describing him as "fat" and a "malingerer," along with efforts to return him to duty, which the motion court and Appellate Division, First Department, concluded did not alter the terms and conditions of employment and were better understood as expressions of medical judgment.

Plaintiff here alleges a more sustained and multifaceted pattern of conduct: monthly encounters over an extended period in which she was allegedly accused of faking her disability, told she was a malingerer, denied or delayed medical authorizations for therapies recommended by her treating providers, threatened with "survey" and termination if she did not return to full duty, and forced to work in assignments that allegedly exacerbated her cognitive symptoms, all against the backdrop of her cooperation with an investigation into another officer's complaint of similar mistreatment.

Whether plaintiff will ultimately be able to prove that this course of conduct was "because of" her disability and that it crossed the line from workplace friction into actionable hostility is a matter for discovery. Under the NYCHRL's "less well" standard, however, a plaintiff need only plead facts that, if credited, could support a finding that she was treated less well than other employees because of a protected characteristic, and that the conduct was more than a petty slight or trivial inconvenience (*Williams*, 61 AD3d at 78–80; *Huntley v City of New York*, 2024 NY Slip Op 32084[U][Sup Ct, NY County 2024]). Plaintiff's allegations, viewed cumulatively and with all inferences drawn in her favor, meet that threshold.

C. *"Survey" and Adverse Action*

The court agrees with defendants that, as a matter of law, a "survey" under the NYPD and pension-system framework is not itself a termination; it is the initiation of a multi-step medical and administrative process culminating in an independent determination by the Medical Board and Board of Trustees (*see Lopez*; *Khurana*; *Cartagena*; *Noufal*).

That does not mean, however, that repeated references to impending survey, coupled with alleged threats that plaintiff would be removed or terminated if she did not abandon the accommodations recommended by her physicians and return to full duty, cannot, as pled, contribute to a hostile work environment or constitute adverse action in the retaliation context. Plaintiff alleges that she perceived the initiation of survey proceedings as a direct threat to her continued employment, that those threats intensified after she participated in an interview concerning another officer's complaint, and that she ultimately felt compelled to retire to avoid being removed due to her disability.

At the motion-to-dismiss stage, the court is not called upon to resolve the ultimate significance of survey in this particular case, but only to determine whether plaintiff has plausibly alleged that defendants' use of survey recommendations and related threats, in context, formed

part of a course of conduct that left her less well off because of her alleged disability and protected activity. Construed liberally and in plaintiff's favor, the complaint satisfies that standard.

D. *Failure to Accommodate and Cooperative Dialogue*

Defendants' cooperative-dialogue argument rests heavily on the premise that plaintiff has not pled a genuine disability. As already discussed, the court finds that she has adequately alleged an impairment of the neurological system and associated functional limitations.

Under NYC Admin. Code §§ 8-107(15) and (28), an employer must provide a reasonable accommodation to a qualified individual with a disability and must engage in a "cooperative dialogue" with an employee who requests an accommodation or whom the employer has reason to know may require one. The obligation to engage in dialogue is triggered once an employee gives notice of a potential need for accommodation; it does not require that the employer immediately accede to the employee's preferred accommodation, but it does require good-faith participation in a process to identify potential accommodations (*Goolsby*, 83 Misc 3d at 457; *Baker*, 445 F3d at 546).

Plaintiff alleges that her treating physicians repeatedly recommended continued limitations and therapies, that she provided defendants with medical notes reflecting her ongoing limitations, that she requested to remain in or return to assignments which had previously allowed her to function effectively with her impairments, and that defendants denied those accommodations, refused or delayed approving therapy authorizations, and at times required her to work in settings that allegedly exacerbated her symptoms. Those allegations are sufficient, at this stage, to state claims for both failure to accommodate and failure to engage in a cooperative dialogue. Whether defendants' actions were ultimately justified by legitimate medical judgments or operational constraints is a question for a later stage of the litigation.

E. *Retaliation*

To state a retaliation claim under the NYCHRL, a plaintiff must allege that she engaged in protected activity, that the employer was aware of that activity, that the employer took an action that disadvantaged her, and that there is a causal connection between the two (*Matter of Local 621*, 178 AD3d at 83; NYC Admin. Code § 8-107(7).

Defendants assert that plaintiff has not adequately pled any protected activity. The complaint, however, may reasonably be read to allege that plaintiff repeatedly requested accommodations, objected to the denial of treatment authorizations, and cooperated with an internal inquiry into the alleged mistreatment of another officer by one of the Physician Defendants. Requests for reasonable accommodation themselves constitute protected activity under the NYCHRL, and complaints about discriminatory or harassing treatment likewise fall within the statute's protection.

Plaintiff further alleges that following her participation in the Donzelli incident interview, the treatment she received from the Physician Defendants became markedly more hostile,

including increased threats to return her to full duty against medical advice and to terminate her due to her disability.

At the pleading stage, these allegations are sufficient to state a plausible claim of retaliation; the causal connection and the nature of any resulting disadvantage are properly explored through discovery.

F. ***Supervisory Liability, § 8-502, and Punitive Damages***

Defendants also contend that there is no basis for supervisory liability, that plaintiff's § 8-502 claim is duplicative of her § 8-107 causes of action, and that punitive damages cannot be recovered against the City.[1]

These arguments raise primarily legal questions that may well narrow the issues in dispute at a later procedural stage. However, the present cross-motion is framed as a CPLR § 3211(a)(7) challenge to the sufficiency of the pleading, and the court concludes that the most prudent course, particularly in light of the overlapping factual issues and the NYCHRL's broad remedial purpose, is to deny dismissal at this time and permit the parties to address any refinement of legal theories on a fuller factual record, including by way of summary judgment.

Accordingly, without prejudging the ultimate viability of any particular remedial theory or individual-liability claim, the court denies the cross-motion to dismiss, in whole, with leave to defendants to renew appropriate legal arguments at a later stage.

Accordingly, it is hereby

ORDERED that plaintiff's motion for a default judgment pursuant to CPLR § 3215 is DENIED in its entirety; and it is further

ORDERED that, in the exercise of the court's discretion under CPLR §§ 2004 and 5015(a), any technical default by defendants is excused, and defendants' opposition papers and cross-motion are deemed timely; and it is further

[1] With respect to plaintiff's demand for punitive damages, the court is mindful that such relief is reserved for conduct evincing a high degree of moral turpitude and showing such willful, wanton, or reckless disregard of the plaintiff's rights as to amount to a conscious indifference to their consequences, and that, under settled precedent, punitive damages are generally unavailable against the City itself in actions of this kind (*see Krohn v New York City Police Dept.*, 2 NY3d 329 [2004], *and Maldonado v The City of New York*, 2024 NY Slip Op 33163[U][Sup Ct, NY County 2024]). At the same time, however, plaintiff's allegations—if credited—describe a sustained course of allegedly hostile, dismissive, and retaliatory conduct by the individual Physician Defendants toward an officer claiming disability, including repeated accusations of malingering, obstruction of recommended treatment, and the use of "survey" threats in a manner plaintiff characterizes as coercive and retaliatory. At this early pleading stage, and without foreclosing defendants' ability to narrow or eliminate the punitive damages demand on a fuller factual record, those allegations are sufficient to permit plaintiff to pursue punitive damages against the individual defendants, subject to the rigorous standard that will ultimately govern whether such extraordinary relief may be awarded.

ORDERED that defendants' cross-motion to dismiss the complaint pursuant to CPLR § 3211(a)(7) is denied in its entirety, without prejudice to renewal of appropriate legal arguments upon a fuller factual record; and it is further

ORDERED that defendants shall serve and file an answer to the complaint within twenty (20) days of electronic service of this decision and order with notice of entry; and it is further

ORDERED that the parties shall confer and, within thirty (30) days of service of this decision and order with notice of entry, jointly contact the Part 5 clerk to schedule a preliminary conference to set a discovery schedule commensurate with the complexity of the claims asserted; and it is further

ORDERED that all other relief requested but not specifically addressed herein is denied.

This constitutes the decision and order of the court.

12/5/2025
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE